

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of FAIR/SAUNDERS, Minors.

UNPUBLISHED

March 20, 2014

No. 317847

Dickinson Circuit Court

Family Division

LC No. 12-000516-NA

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Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her three daughters—DF, BF, and AS—pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). Because respondent had made no attempt to comply with her case service plan or to rectify the conditions that led to state involvement until nearly a year after the children's removal from respondent's custody, we affirm.

**I. BACKGROUND**

Respondent's youngest child, AS, was born on July 18, 2012. In the month after AS's birth, respondent was arrested multiple times. On August 5, 2013, respondent was arrested in Wisconsin after attempting to shoplift baby supplies from a Walmart store and was found with drug paraphernalia and methamphetamine residue on her person. On August 21, 2012, respondent was arrested and jailed for felony nonsupport in relation to a son who had been born in 2009, and over whom she had lost custody to the child's father.<sup>1</sup> At the time of her arrest, DF and BF were vacationing with their grandparents. Respondent left AS in the care of her boyfriend, DS, who was the father of the older two children. DS reported to the Department of Human Services (DHS) that he was unable to care for the one-month-old child, whom respondent had conceived with another man.<sup>2</sup> The DHS took AS into care on an emergency

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<sup>1</sup> Respondent had also previously voluntarily ceded her parental rights to another son born in 2005. Respondent made this decision after failing to comply with a court-ordered case service plan.

<sup>2</sup> AS's legal father did not participate in the child protective proceedings and the court terminated his parental rights without objection.

basis and placed her into a foster home. Three days later, respondent and DS were arrested together. DS was driving erratically and respondent was his passenger. Both were under the influence of muscle relaxers. At that time, the DHS placed DF and BF into the care of their paternal grandparents.

Respondent and DS pleaded to the allegations raised in a second supplemental petition and the court took jurisdiction over the children. Thereafter, respondent did nothing to comply with the court-ordered case service plan. Respondent claimed to suffer from bipolar disorder, yet failed to follow through with a psychological evaluation or treatment. She admittedly continued to abuse controlled substances, refused to comply with drug screens, and engaged in no therapy. She also had no job or housing and neglected to maintain contact with her case worker. Respondent lost her right to even supervised visitation based on her lack of cooperation and last saw her children in January 2013. At a February 2013 dispositional review hearing, respondent suddenly offered to relinquish her parental rights, but the court gave her additional time to consider the matter and she later changed her mind. Respondent spent four days in jail during the proceedings for violating a restraining order precluding her contact with DS. In May 2013, respondent began to serve a 90-day sentence in Wisconsin related to her August 2012 arrest.

The court held a termination hearing on August 1, 2013. Respondent participated by telephone as she was still incarcerated. Respondent claimed to be “eighty-eight days clean,” and now that she was sober, realized that she wanted to work toward reunification with her children. Respondent promised to comply with her service plan upon her release, which was scheduled for three days later.

The court declined to terminate DS’s rights, allowing him to continue working toward reunification with DF and BF. In terminating respondent’s rights, the court cited “the chaotic lifestyle” the older children had endured and the lack of any bond between respondent and young AS. The court noted that respondent’s recent sobriety was forced by her incarceration. In terminating her parental rights, the court relied primarily upon respondent’s failure to comply with her case service plan and her need to “start from scratch” with no assurance of success upon her release from jail.

## II. STATUTORY GROUNDS

Respondent now challenges the circuit court’s determination that at least one statutory ground for termination existed. “To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). We review a circuit court’s factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Moss*, 301 Mich App at 80 (quotation marks and citation omitted). “Clear error signifies a decision that strikes us as more than just maybe or probably wrong.” *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Furthermore, the “clear and convincing standard is the most demanding standard applied in civil cases[.]” *Id.* (citations omitted).

The circuit court found termination supportable under MCL 712A.19b(3)(c)(i), which provides:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

At the termination hearing, approximately one year had elapsed since the children were removed from respondent's care. The court did not actually take jurisdiction of the children, however, until October 24, 2012. The court took jurisdiction based on respondent's drug use, untreated mental illness, and criminal history. Respondent further admitted that her home was in an unsafe condition. By the time of the termination hearing, the evidence showed that these conditions continued to exist. Respondent was then incarcerated. She had not engaged in treatment for her mental illness or substance abuse. Although respondent claimed that she wanted to enter in-patient therapy upon her release from jail, she had made no application for such services despite that she was scheduled to be released in only three days. Respondent claimed to be sober, but the court noted that this was due to her incarceration. Moreover, respondent's only plan for housing upon her release was with an unidentified friend she had met at church. Furthermore, respondent admitted that she had done absolutely nothing to comply with the case service plan. Between August 22, 2012, when AS was removed from respondent's care, until the August 1, 2013 termination hearing, respondent did not take any steps to rectify the conditions leading to the court's assumption of jurisdiction. Absent any evidence of respondent's ability to benefit from services, the court did not clearly err in finding that she could not rectify these conditions within a reasonable time.

The circuit court also relied upon MCL 712A.19b(3)(g), which provides for termination of parental rights if: "The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Respondent had not provided proper care and custody for her children in the past due her untreated mental illness, controlled substance addiction, and repeated incarcerations. As noted in relation to factor (c)(i), respondent could not remedy these problems to provide proper care and custody within a reasonable time. Despite respondent's claim that she wanted to work toward reunification, she had made no concrete plan to achieve that goal or even to provide for herself upon her release from jail. Respondent had not arranged for psychological or substance abuse treatment, had no employment or housing, and had not participated in any services to improve her parenting skills. Accordingly, the circuit court did not clearly err in finding termination to be supported under this factor as well.

Finally, the circuit court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(j), which provides: "There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Respondent cites *In re Boursaw*, 239 Mich App 161; 607 NW2d 408, overruled in

part on other grounds *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000), for the proposition that a court may not terminate parental rights where the prediction of future harm to the children is conjecture. In *Boursaw*, 239 Mich App at 169, this Court noted that there was “no evidence in the record that respondent ever struck or purposefully harmed the child in any way.” Rather, the circuit court based its decision on the respondent-mother’s “poor judgment.” This Court found the lower court’s reasoning to be insufficient because it failed to specify any judgment that could have caused the child harm. *Id.* The circuit court in that case was also concerned about the respondent’s ability to avoid future harmful behavior based on an expert’s hedged opinion concerning her success in treatment for a borderline personality disorder. *Id.* at 169-170.

In this case, there similarly is no evidence that respondent ever physically harmed her daughters. However, unlike the respondent in *Boursaw*, the current respondent made *no* efforts to treat her mental illness and substance abuse. As these conditions impair a person’s judgment and emotional stability, it was not clear error for the circuit court to determine that the children could face harm in the future if returned to their mother’s care.

### III. BEST INTERESTS

Respondent contends that termination was not in the children’s best interests. Pursuant to MCL 712A.19b(5), “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” A circuit court must determine by a preponderance of the evidence that termination is in the child’s best interest. *Moss*, 301 Mich App at 83. “In deciding whether termination is in the child’s best interests, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted).

Respondent contends that the circuit court looked to the best interest factors of the Child Custody Act, MCL 722.23, in rendering its decision, but improperly failed to consider any factors other than the parent-child bond. The use of the child-custody factors set forth in MCL 722.23 is not required in child protective proceedings, however. *In re JS & SM*, 231 Mich App 92, 102-103; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo*, 462 Mich at, 353; *In re Schejbal*, 131 Mich App 833, 835; 346 NW2d 597 (1984).

Moreover, the circuit court did not err in concluding that termination was in the best interests of the children. The court determined that there was a strained bond between respondent and DF and BF and that respondent never really formed a bond with AS. The children had not seen their mother in almost eight months by that time because respondent had refused to cooperate with the case service plan. The court acknowledged that DF and BF were in relative placement, but stated that the “permanency plan has never been for the children to remain in the relative placement forever” and therefore the placement did not weigh against

termination. The court considered the children's need for permanency, finding it speculative at best that respondent would be able to provide a stable home. These findings are clearly supported by the record.

We affirm.

/s/ Elizabeth L. Gleicher

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell